IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5473 OF 2004.

1. The Modern Education Society,
   Ichalkaranji, registered Trust
   Society PTR No.F-96,
   Kolhapur Road, Ichalkaranji,
   Tal Hatkalange,
   Kolhapur.

2. Shri Nitin Chandrakant Mali,
   19-T 167, Ichalkaranji,
   Kolhapur.

3. Shri Chandrakant Gopal Mali,
   r/o as above.

4. Smt. Sushila Chandrakant Mali,
   r/o. as above.

5. Shri Arjun Laxman Mali,
   r/o. Kalambi, Tal : Miraj,
   Dist: Sangli.

6. Smt. Manikanttai Arjun Mali
   r/o. as above.

7. Shri Gangadhar Krishna Todkar,
   Occ: Service, Near Jain Colony,
   At Post : Malgaon,
   Tal Miraj,
   Dist : Sangli .. Petitioners

versus

1. Shri Rajendra Mahadeo Mali,
   r/o. Mahavir Co-op. Hsg. Soc,
   Ichalkarani, Kolhapur.

2. Smt. Sushma Rajendra Mali,
   Plot No.28, Mahavir Co-op.Hsg.Soc.
   Ichalkarani, Kolhapur.

3. Shri Mukund Mahadevrao Mali,
   r/o.Anant Electrical,
   Hulgeshwari Road,
   Ichalkaranji, Kolhapur.

4. Rajendra Bapuso Mali,
   r/o. Near Paisa Fund Bank,
   Hupri, Ichalkaranji,
   Kolhapur.

5. Shri Maruti Krishna Mali,
   r/o. Nagraj paper Agency,
   Hugleshwari Road,
   Ichalkaranji, Kolhapur.

6. Shri Suhas Mahadeo Mali,
   r/o. Jai Bungalow,
   Station Road, Ichalkaranji.

7. Shri Sanjay Arvind Mali,
   r/o. as above

8. Shri Suryakant Ramchandra Mali
   r/o. Yeshoda Niwas,
   Near Anna Ramgonda School,
   Ichalkaranji.

9. Shri Ashok Pandurang Kale, (deleted)
   r/o. Kasba Bavda,
   Malbhag, Kolhapur.

10. Smt. Urmila Panditrao Desai,
    r/o.Vivekanand College,
    Ichalkaranji,
    Tal Hathkalangale.

11. Shri Shivaji Shankar Jadhav,
    r/o.Dwara Modern High School,
    Ichalkaranji,
    Tal Hathkalangale. .. Respondents

Shri V.B. Naik for the petitioners

Shri G.N.Salunkhe for the Respondent

Coram : S.R.Sathe, J.
Dated : 19th July, 2007

JUDGMENT.

1. Heard both the learned Advocates. Matter heard finally at admission stage.

2. Petitioners, the original plaintiff in Regular Civil Suit No.166 of 2003 filed in the Court of CJJD, Ichalkaranji, have filed this writ petition under Article 226, 227 of the Constitution of India challening the order passed by the Court of CJJD Ichalkaranji, in Regular Civil Darkhast No.205 of 2003 whereby the application filed by the plaintiff under Order XXI Rule 32 of CPC was dismissed.

3. Brief facts giving rise to this petition are as under:

. On the date of filing of the above mentioned suit plaintiffs filed the application exhibit 5 seeking temporary injunction against the defendants. After hearing both the parties, the learned trial Judge pased following order below exhibit 5.

> "The Defendant Nos.1 to 5 or their agents, employees and other person or persons be restrained by an order of temporary injunction from causing disturbances or interferences in the management and administration of the Trust, i.e. Suit

Property No.1-B by entering in the Suit Property 1-A, till the final disposal of the suit".

According to plaintiffs the defendants did not obey the said order. Hence, on 19.12.2003 the petitioners filed the above mentioned Darkhast and prayed that as the defendants have not obeyed the order they be detained in Civil Prison for 90 days, the property of the defendants be attached and police aid be provided so as to prevent further breach of injunction order.

4. The defendants opposed the said execution petition on the ground that such petition is not tenable under Order XXI Rule 32 of the Code of Civil Procedure . It was argued on behalf of the plaintiffs in the said execution proceeding that such application is maintainable in view of the provisions of Section 36 of the Code of Civil Procedure. The learned Court however, held that the plaintiffs should have filed the application under Order 39 Rule 2A of CPC or he should have filed application under Section 36 before the Court which passed the order of temporary injunction. He,

therefore, held that no seperate petition as execution petition is tenable. He, therefore, dismissed the application.

5. Being aggrieved the plaintiffs have filed the present petition. In this petition before me Shri Vinit Naik, the learned Advocate holding for the petitioner submitted that the petition under Section 36 of CPC is maintainable in the instant case. As against this Shri Salunkhe, the learned Advocate for the respondent submitted that provisions of Order XXI Rule 32 are not applicable in the instant case because injunction order in the instant case was of prohibitory nature. So, according to him, it was in fact not an executable order and as such there was no necessity to file a seperate execution petition.

6. In order to decide the controversy in question it is necessary to see what Section 36 of the Code of Civil procedure and Order XXI Rule 32 says. it runs as follows :

> **Section 36 : Application to orders:** The provisions of this Code relating to the execution of decrees (including provisions

relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution or orders (including payment under an order)

Order 21. Rule 32 : Decree for specific performance for restitution of conjugal rights or for an injunction:- (1) Where the party against whom a decree for the specific performance or a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in a cse of a decree for the specific performance of a contract, or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for [six months] if the judgment-debtor has not obeyed the decree and the decree holder has applied to have the attached property sold, such property may be soldm, and out of the proceds the Court may award to the decree holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of [six months] from the date of attachment, no application to have the property sold has been made, or if made has

been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the Court, atthe cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and may be ascertined in such manner as the court may direct and may be recovered as if they were included in the decree.

7 The bare reading of Order XXI Rule 32 shows that it is applicable for all sorts of injunctions. By no stretch of imagination it can be said that it is applicable only in respect of injunction of a mandatory nature and not in respect of order of prohibitory nature. Section 36 clearly indicates that even the orders which are passed by the court can be executed and the provisions of the Civil Procedure Code relating to the execution of decrees are applicable for execution of such orders. So, it is crystal clear that even the order passed under Order 39 Rule 1 or 2 of CPC, whether it is of mandatory nature or prohibitory nature, can be executed under Section 36. While doing so one has to follow the provisions of Order XXI Rule 32 of CPC. There is no substance in the arguments advanced by the learned Advocate for the respondents

that there can't be any execution proceeding in respect of prohibitory order. It is nedless to say that if there is any breach of prohibitory order or in other words gthe prohibitory order is not obeyed by the person against whom it is passed then in the nature of Order XXI Rule 32 can be carried out. Even this High Court in **Venkat Niloba v. Kishan Dadarao Dhumal 1983 Mh.L.J. 1105** has held that order granting interim mandatory injunction can be executed in the same manner as a decree under Section 36 of the Civil Procedure Code. It is true that in that case the nature of the inju ction was of mandatory nature, while in the instant case the order is of prohibitory nature. However, that would not make any difference so far as the application of Section 36 or Order XXI Rule 32 is concerned. So, the petition filed by the plaintiff for taking particular action for the disobedience of the order by defendants was certainly maintainable under law. The finding of the learned trial Judge that execution petition is not tenable is not correct and needs to be set aside.

8. The only question is whether plaintiff shouldhave filed present petition in the court which

passed the said order of injunction or whether he was entitled to file such petition seperately. It is pertinent to note that the petition in the instant case was filed by the Plaintiffs in the court of CJJD, Ichalkaranji and the order with regard to temporary injunction was passed by the Court of 2nd Joint CJJD, Ichalkarani. Having regard to the provisons of Order XXI Rule 10 of CPC the execution proceeding is normally expected to be filed in the court which passed the decree. So, from that angle it can be said that the present petition ought to have been filed before the Court which passed the temporary injunction order i.e. Court of 2nd CJJD, Ichalkaranji. However, the same is actually filed in the Court of CJSD Ichalkaranji and then the same seems to have been assigned to the Court of CJJD, Ichalkaranji.

9. Infact, when the learned trial Judge also felt that separate application in different court is not maintainable, he should have directed to present the said application before the proper court as ultimately plaintiff was claiming relief regarding the breach of injunction order.

10. While dealing with this application it is also necessary to see the provisions of Order XXXIX Rule 2A. It runs as follows:

> **2-A. Consequence of disobedience or brech of injunction :-** (1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or brech to be attached, and may also order such person to be detained in the Civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.
>
> (2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

So, we find that the specific provision is made in the statute for the breach of the prohibitory order passed by the court and it is expected that the court granting the injunction or making the order should pass further order regarding disobedience or breach of the said order. So, having regard to all these aspects I pass the following order:

ORDER

. The Order passed by the trial Judge below Exhibit 1 in R.D.No.205 of 2003 is set aside. The said application be placed before the Second Joint CJJD, Ichalkaranji for disposal according to law.

. The said court to give due opportunity to both the parties to put forward their case with regard to the said application i.e. P.D.No.205 of 2003 and pass the necessary order.

(S.R.Sathe, J.)